IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TQ DELTA, LLC,	)	
	)	
Plaintiff,	)	C.A. No. 13-cv-1835-RGA
	)	
v.	)	
	)	
2WIRE, INC.,	)	
	)	
Defendant.	)	

PRELIMINARY JURY INSTRUCTIONS

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I. Preliminary Instructions

Members of the jury:

Now that you have been sworn, I have the following preliminary instructions on your role as jurors. You will hear the evidence, decide what the facts are and then apply those facts to the law that I will give you. You and only you will be the judges of the facts. You will have to decide what happened. I play no part in judging the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be. My role is to be the judge of the law. I make whatever legal decisions have to be made during the course of the trial and I will explain to you the legal principles that must guide you in your decisions. You must follow the law that I give you, whether you agree with it or not.

1. The Nature of the Action and the Parties

This is a patent case.

Patents are granted by the United States Patent and Trademark Office (sometimes called the "Patent Office," "PTO" or "USPTO"). A patent gives the owner the right to exclude others from making, using, offering to sell, or selling the claimed invention within the United States or importing it into the United States.

I will now show you a short video made by the Federal Judicial Center that provides an overview of the U.S. Patent System.

(video played)

TQ Delta is the owner of a patent, which is identified by the Patent Office number: 8,462,835 (which will usually be called "the '835 patent"). This patent may also be referred to as "TQ Delta's patent." 2Wire is the other party here.

The patent involved in this case relates to digital subscriber line ("DSL") technology. DSL technology allows existing telephone lines to be used for high speed data communication, including broadband access to the Internet.

During the trial, the parties will offer testimony to familiarize you with this technology.

The only job of the jury in this case will be to determine whether the two asserted patent claims, which are claims 8 and 10 of the '835 patent, are invalid. You will not need to consider infringement, because 2Wire makes products that meet each limitation of the two asserted claims. Thus, if 2Wire fails to establish that the two asserted claims are invalid, then 2Wire infringes them. But, if the claims are invalid, then it makes no difference whether 2Wire's products meet all the limitations of the asserted claims, because no one can infringe an invalid patent claim. It will therefore be your job to determine whether 2Wire has proven that the two asserted claims are invalid.

2. Patent Litigation

A party may challenge the validity of the asserted claims of a patent. When a party challenges the validity of patent claims, you must decide, based on the instructions I will give you, whether the party has proven that the patent claims are invalid. The party challenging validity must prove invalidity by clear and convincing evidence. I will discuss more on this topic later.

3. Contentions of the Parties

2Wire contends that claims 8 and 10 of the ‘835 patent are invalid as being either anticipated or rendered obvious by prior art.

4. Conduct of the Jury

I'm now going to explain some rules about your conduct as jurors. First, I instruct that during the trial and until you have heard all the evidence and retired to the jury room to deliberate, you are not to discuss the case with anyone, not even amongst yourselves. If anyone should try to talk to you about the case, including a fellow juror, bring it to my attention promptly. There are good reasons for this ban on discussions, the most important being the need for you to keep an open mind throughout the presentation of evidence. Many of you use cell phones, smart phones and other electronic devices and computers to access the internet and communicate with others. You must not talk to anyone about this case through any of those means. You also must not talk the old fashioned way of just talking. This includes your family and friends. You must not communicate orally with anyone about the case on any kind of electronic device of any kind.

The lawyers, parties and witnesses are not supposed to talk to you outside the testimony and arguments presented in the courtroom. If any lawyer, party or witness does not speak to you when you pass in the hall, ride in the elevator or the like, it is because they are not supposed to talk or visit with you, not because they are rude. That is why you are asked to wear your juror tags. It shows that you are someone who is not to be approached in any way.

Second, do not read or listen to anything related to the case that is not admitted into evidence. By that I mean if there is a report on the internet relating to the case, which is probably pretty doubtful, but if there is, do not read it.

In addition, do not try to do any independent research or investigation on your own in any matters related to the case or this type of case. Do not do any research on the internet, for example, about DSL technology. You are to decide the case upon the evidence presented at trial.

You should not consult dictionaries or reference materials such as the internet or any other electronic sources to obtain information about this case or to help you decide the case. Do not try to find out any information from any source outside what you hear in the courtroom. Do not reach any conclusion as to the issues in the case until all the evidence is in. Keep an open mind until you start deliberations at the end of the case.

During the trial it may be necessary for me to talk to the lawyers out of your hearing by having a side bar, which is when we meet over there. If that happens, please be patient. We're not trying to keep important information from you. The side bars are necessary for me to fulfill my responsibility, which is to be sure that evidence is presented to you correctly under the law. We will, of course, do what we can to keep the number and length of these side bars to a minimum. While we meet, I may invite you to stand up and stretch and take a short break or if it's a lengthy issue perhaps even call a recess. I also may not grant an attorney's request for a side bar. Do not consider my granting or denying a request for a side bar as any indication of my opinion of the case or of what your verdict should be.

Now, only the lawyers and I are allowed to ask questions of witnesses and I don't tend to ask questions of witnesses. You are not permitted to ask questions of witnesses. If you wish, you may take notes during the presentation of evidence, the summation or arguments of attorneys at end of the case and during my instructions to you on the law. You also get my instructions on the law in writing. My courtroom deputy will arrange for pens, pencils and paper. Any notes you take are for your own personal use, they are not to be given or read to anyone else.

We also have, as you can see, a court reporter, the woman in front of the desk here, who will be transcribing the testimony during the course of the trial, but you should not assume that the transcripts will be available for your review during your deliberations, nor should you consider that notes that you or your fellow jurors may take as a kind of written transcript.

Instead, as you listen to the testimony keep in mind that you will be relying on your memory of that testimony during your deliberations.

Here are a couple other specific points to keep in mind about note taking. It's permitted, it's not required. Each of you may take notes, but no one is required to. And do not take your notes away from court. If you do take notes, take them with you each time you leave the courtroom and leave them in the jury room when you leave at night. At the conclusion of the case, after you have used your notes in deliberations, a court officer will collect and destroy them to protect the secrecy of your deliberations.

5. Evidence

The evidence from which you are to find the facts consists of the following, the testimony of witnesses, documents and other things received as exhibits and any facts that are stipulated; that is, formally agreed to by the parties.

The following things are not evidence: Statements, arguments and questions of the lawyers for the parties in this case, objections by lawyers, any testimony I tell you to disregard and anything you may see or hear about this case outside of the courtroom. There are rules that control what can be received into evidence.

When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks it is not permitted by the rules of evidence, that lawyer may object. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence. You should not be influenced by the fact an objection is made. Objections to questions are not evidence. Lawyers have an obligation to their clients to make objections when they believe the evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence you receive for a limited purpose only, you must follow that instruction. Sometimes testimony or other evidence may be ordered struck from the record by me and I may also instruct you to disregard that evidence. Do not consider any testimony or other evidence that gets struck or excluded. Do not guess about what a witness might have said or what an exhibit might have shown.

There are two types of evidence that you may use in reaching your verdict. One type of evidence is called direct evidence. An example of direct evidence is when the witnesses testifies about something that the witness knows through his or her own senses, something the witness

has seen, felt, touched, heard or did. If a witness testified that she saw it raining outside and you believe her, that would be direct evidence that it was raining.

The other type of evidence is circumstantial evidence. Circumstantial evidence is proof of one or more facts from which you can find another fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining outside. You should consider both kinds of evidence that are presented to you. The law makes no distinction in the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

6. Burden of Proof

In any civil case, facts must be proven by a required standard of evidence known as the burden of proof. 2Wire has the burden of proving that asserted claims 8 and 10 of the '835 patent are invalid and has to do so by clear and convincing evidence. Proof by clear and convincing evidence is evidence that shows that the truth of a factual contention is highly probable.

7. Evaluating a Witness

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. Credibility means only whether a witness is worthy of belief. You may believe everything a witness says or only part of it or none of it.

You are also going to hear some testimony from expert witnesses. When knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is someone that we often refer to as an expert witness and that person is permitted to state his or her opinion on those technical matters. However, you're not required to accept their opinion. As with any other witnesses, it's up to you to decide whether to rely upon it. In weighing an expert's testimony, you may consider an expert's qualifications, the reasons for the expert's opinions and the reliability of the information supporting the expert's opinions. Expert testimony should receive whatever weight and credit you think appropriate given all the other evidence in the case. You are free to accept or reject the testimony of experts, just as with any other witness.

8. Trial Procedure

We are about to begin the opening statements in the case. Before we do that, I want to explain the procedures that we will be following during the trial and the format of the trial. This trial, like all jury trials, comes in six phases. We have completed the first phase, which was to select you as jurors.

We are now about to begin the second phase, the opening statements. The opening statements of the lawyers are statements about what each side expects the evidence to show. The opening statements are not evidence for you to consider in your deliberations. You must make your decision based on the evidence and not the lawyers' statements and arguments.

In the third phase, the evidence will be presented to you. Witnesses will take the witness stand and documents will be offered and admitted into evidence.

2Wire goes first in calling witnesses to the witness stand. These witnesses will be questioned by 2Wire's counsel in what is called direct examination. After the direct examination of a witness is completed, TQ Delta has an opportunity to cross-examine the witness. After 2Wire has presented its witnesses, TQ Delta will call its witnesses, who will also be examined and cross-examined.

The evidence often is introduced piecemeal, meaning that all the evidence relating to an issue may not be presented all at one time but, rather, may be presented at different times during the trial. You need to keep an open mind as the evidence comes in. You are to wait until all the evidence comes in before you make any decisions. In other words, keep an open mind throughout the entire trial.

In the fourth phase, I will read you the final jury instructions. I will instruct you on the law that you must apply in this case. I have already explained to you a little bit about the law. In the fourth phase, I will explain the law to you in more detail.

In the fifth phase, the lawyers will again have an opportunity to talk to you in what is called "closing arguments." As with the opening statements, what the lawyers say in the closing arguments is not evidence for you to consider in your deliberations.

Finally, the sixth phase is the time for you to deliberate and reach a verdict. You will evaluate the evidence, discuss the evidence among yourselves, and decide this case.